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Voice Over IP Forum	)
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In crafting the Telecommunications Act of 1996, Congress paid careful attention to the benefits Americans derived from the Internet, its open architecture, and its ubiquity. Recognizing that powerful new Internet applications were taking advantage of this unique and open network to drive innovation, productivity, and commerce, Congress was careful to create and codify a regulatory safe-harbor for the Internet and Internet applications. This environment not only helped drive economic growth by encouraging the development of new applications, but these new applications also drove rapid and profound interest in connecting to the Internet. In this fashion, the Internet has become exponentially more valuable; this value is a product of the number of users connected to the network as well as the continued availability of powerful new applications that take advantage of the network's ubiquity.

VoIP is yet another Internet application and, as such, the mere specter of common carrier regulation opens up a Pandora's box that has the potential to not only devalue and slow the growth of VoIP, but also detrimentally impact future innovation of new Internet communications applications. By advocating that common carrier regulations apply to Internet applications, the proponents unwittingly threaten to commence a cycle that could lead to the decline or perhaps the destruction of the delicate ecosystem of the Internet itself. Should the cycle begin with VoIP regulation, it will undoubtedly spread to other applications, perhaps e-mail, instant messaging, Internet conferencing, Internet video and "radio" programming. No doubt endless other Internet applications would also soon fall prey to similar regulation. As the cycle of regulating applications progresses, the Internet, a once fertile ground for American innovation, would undoubtedly become increasingly barren of creativity or investment. As regulation reduces the availability of innovative Internet applications the value of the Internet to subscribers will decrease; ultimately they will unplug themselves – not only threatening the growth of the Internet itself, but also any undermining demand for the deployment of wireline and wireless broadband networks.

While others today will focus on the promise of VoIP, I believe in many regards that is already self-evident. Instead, I will focus on four critical issues of communications policy that should be addressed by this Commission with respect to VoIP. Although the issues of CALEA, emergency services, Universal Service and Access Charges are important matters for consideration – their favorable resolution does not require this Commission to take the position that VoIP services be regulated as traditional telecommunications carriers. Indeed, such a result would not only lead to a fundamental devaluation of the Internet and Internet applications but would, as a more practical matter, likely lead VoIP providers to offer their services from offshore locations at the expense of American jobs, tax revenues and outside of the control of domestic legal authority.

CALEA

Proponents of regulation assert that, in order to properly effectuate CALEA, certain providers of voice over IP services must be regulated as telecommunications carriers under the Telecommunications Act. While Vonage's VoIP offering is clearly an information service under the Telecommunications Act, CALEA and the Act are completely different statutes and entities not subject to Title II carrier regulation may, in some circumstances, be otherwise subject to CALEA's obligations. Notwithstanding, it is important to understand that even under such a framework, the vast majority of voice-enabled Internet communications will forever remain outside the scope of CALEA. Internet communications such as Instant Messenger, ICQ, Skype, Webex, Net Meeting and voice enabled e-mail all remain exempt from coverage under the current statute. As a result, it is a disservice for parties to suggest that this Commission can solve important matters of national security simply by characterizing some VoIP providers as telecommunications carriers under CALEA or the Act itself. If CALEA's information service provider exemption somehow limits law enforcement's ability to perform vital functions, it is critical to confront this issue head-on, and in a thoughtful and technologically neutral fashion, rather than to sweep CALEA's potential infirmities under the rug and address national security issues in a piecemeal manner, one service provider or one technology at a time.

Data services such as Vonage store and transmit information to the proper authorities when they receive a subpoena. Vonage has been served subpoenas from various law enforcement agencies. In all instances, Vonage has complied with its obligations under the law to provide information to law enforcement representatives. In no instance was Vonage unable to provide requested information. Although Vonage has never received a request from law enforcement for a customer's data stream (ie: a "call"), the company has the ability to route or store this data flow. There exists no immediate technical obstacle to providing this data.

Although Vonage is capable of intercepting call flows at the request of law enforcement, the rapid development of new Internet applications call for the FCC's thoughtful consideration of whether CALEA's limited scope materially impacts

legitimate law enforcement activity. If so, it is incumbent upon the Commission to work with Congress and for Congress to craft legislation broad enough to address these larger issues. While the deployment of new technology will always raise new concerns, innovations in data networking and VoIP will offer the means by which authorized law enforcement is able to transparently and instantaneously receive call data, billing information, or tap or intercept real-time data flows without service provider intervention, delay or overhead. Such real time intercept capabilities need not be limited to one technology or one service provider, but with proper guidance by this Commission these capabilities could ultimately be deployed irrespective of the communications device being utilized.

EMERGENCY SERVICES

Proponents of VoIP regulations assert that to provide adequate access to emergency services, VoIP providers must be regulated as telecommunications carriers. Unfortunately regulations themselves will not solve unique technical issues associated with provisioning emergency services over data networks. Admirably, however, this industry has made significant progress in resolving these technical issues and deploying emergency services in the absence of direct regulation.

Just last week, the National Emergency Number Association adopted a joint resolution with the VoIP industry and Vonage directly, to work together toward technical solutions for the delivery of VoIP 911 calls to emergency service personnel. This was done in the absence of any government intervention or policy directive. In reality, competitive necessity requires not only that VoIP providers offer emergency dialing capabilities, but also ensures that they will compete based, in part, upon the functionality and reliability of these capabilities. Early on Vonage undertook to deploy one of the first VoIP emergency service solutions. Vonage's "Dialing 911" essentially provides functionality that speed dials the user's local public safety answering point ("PSAP"). This solution is the first phase in a series of improvements that will ultimately permit VoIP providers to transmit ANI and ALI information to the PSAPs in a manner similar to the fashion in which wireless carriers offer emergency services. Although unique technical issues confront providers and PSAPs seeking to facilitate the delivery of emergency services in a packet based environment, industry is working cooperatively with emergency service organizations to overcome technical and operational hurdles. In addition to working with NENA, Vonage is also working directly with PSAPs in Minnesota, Texas, Washington and Vermont.

In light of the voluntary cooperation between industry and emergency services to expeditiously formulate a framework for next generation deployment, it is unnecessary and unwise to impose legacy regulations designed for legacy network architectures. Since technology is evolving, the existing 911 infrastructure must also evolve in order to be able to communicate with new technologies. The Commission should formulate a policy which enables the systems and capabilities of emergency services to move forward into the 21st century, not relegate them to the 20th Century. Imagine a world where you can access emergency services from any device including a PDA, Blackberry, instant

messenger or similar device. In this data world, medical records and precise location information would be delivered to personnel in the field seamlessly and wirelessly. Because this is a data world, *any* information can be transmitted to those on the scene – in real-time. Furthermore, by expanding the universe of devices that can connect to emergency services, the Commission will facilitate the advancement of a robust funding mechanism that will support the upgrade and deployment of enhanced next generation emergency service capabilities. Although the industry is moving in this direction on its own, the Commission can provide valuable input and facilitate the universal deployment of this infrastructure.

UNIVERSAL SERVICE

Proponents of VoIP regulation argue that in order to preserve the USF fund, all forms of VoIP must somehow be characterized as telecommunications carriers. This is untrue, not only because, for example, Vonage pays virtually equivalent amounts to USF as an indirect contributor as it would if it were required to contribute directly – but also because the Commission has broad statutory flexibility to modify the current contribution metrics without engaging in any perversion of the statutory dichotomy between information and telecommunications services. While Universal Service has, to some degree, historically been used to promote the deployment of narrowband telecommunications capabilities to rural and underserved areas, the advent of new broadband technologies and Internet applications including VoIP require not only that the base of contributions remain sufficient – but also that the funds be appropriately shifted from the maintenance of legacy infrastructure to programs that facilitate the deployment of broadband networks and applications.

At present, Vonage contributes to USF as an end-user of telecommunications services. Based on figures current as of September 2003, Vonage paid into USF an amount equal to approximately $1.00 per the equivalent of a subscriber line. Although Vonage does not contribute directly into USF on the basis of its interstate subscriber revenue, the company estimates that based upon call usage patterns it would contribute approximate $1.05 per subscriber line equivalent under such a direct funding mechanism. Several other funding alternatives are currently under review at the Commission. Under a connection based methodology, assuming a surcharge of $1 per connection, Vonage's contribution would remain the same as it is today. If Vonage were to pay directly into the fund under some of the per-number contribution proposals under consideration, Vonage would pay $1.07 per customer. If Vonage were to pay directly into the fund under any of these various mechanism, the amount would not be drastically larger than what is paid in today as an end-user of telecommunications services.

Vonage's service and other exciting communications applications increasingly rely upon broadband Internet access and broadband networks. The universal availability of these powerful applications, as well as the ubiquity of the Internet itself, remains dependent upon broadband network deployment to underserved markets and rural areas. The Commission and Congress should work to ensure that carriers are sufficiently

incentivized to deploy new broadband network architecture and that USF is not overburdened, but sufficiently capitalized, to appropriately and efficiently encourage broadband deployment and the availability of next generation services. To the extent that outflows from USF, or the contribution metrics for inflows need to be altered to ensure this goal, the Commission has sufficient discretion to do so under the current statutory framework.

ACCESS CHARGES

Finally, proponents of regulating VoIP argue that to maintain the current access charge regime, VoIP must be regulated as a telecommunications service. This is untrue as well – especially considering the quagmire of intercarrier compensation issues that existed prior to the commercial deployment of VoIP. For example, because of the antiquated access fee regime, it costs more money to call someone one mile away versus six thousand miles away. The reasons for initiating access charge reform proceedings are unrelated to the deployment of VoIP and the Commission must be careful not to derail or forestall the current efforts to address access reform independent of any VoIP NPRM.

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In closing, it is important to recognize that the Internet is unlike other networks in that it is an open platform for development. This open platform and the regulatory safe-harbor created by Congress have supercharged innovation, efficiency, economic growth, as well as the ubiquity of the Internet itself. While I believe few question the promise of Internet communications applications, calls for inappropriate regulations threaten not only to slow domestic deployment of innovative technologies, but also retard America's unmatched leadership in the field.

Rather than discouraging American innovation and driving service providers to offshore locations at the loss of American jobs and tax revenues, it is incumbent upon this Commission to reject calls to regulate the Internet and thereby ignore Congressional intent. In exploring VoIP in its upcoming NPRM, this Commission has a tremendous opportunity not only to reaffirm this Nation's policies concerning the development and deployment of the Internet and Internet applications -- but also to provide a new catalyst for investment in broadband infrastructure and Internet communications applications and further ensure the delivery of new technology and features to consumers, law enforcement and emergency service personnel alike.